fectly valid in Missouri. Justice BRADLEY dissents strongly, and advocates the liberal construction of contracts of this nature, and his views are certainly borne out by the increasing number of conditional sales in various forms, of which the "instalment plan" of selling sewing machines, and "car trusts," are examples. Such contracts bid fair to become quite as much in the usual course of business as the long-recognised contracts of hiring, bailments for storage, etc. And no reason can be shown why the possession is more or less deceptive in the one case than in the other. The great weight of authority, as we have seen, is against the last two Pennsylvania cases, and it is to be hoped that the Supreme Court of that state will not long continue to occupy its present nearly unique position.

LUCIUS S. LANDRETH.

United States Circuit Court, District of Minnesota.

SONSTIBY *v.* KEELEY.

In cases of conflict between the decisions of the federal courts and those of the state courts, the former will, even on questions of commercial law, follow the decisions of the state courts if it appears that, by reason of the situation of the parties and of the subject-matter, a contrary ruling would subject a party to a double payment of the same debt, without the possibility of relief from the federal courts.

In a suit in a federal court, a sale made in Minnesota was attacked on the ground of the vendor's fraud, and it appeared that part of the consideration was an agreement by the vendee to assume the payment of a debt of the vendor to a third person, which agreement would, under the rulings of the Minnesota courts, render the vendee liable to such third person therefor. *Held*, that the federal court would treat the assumption of such debt as a valid consideration.

Whether, in an action at law involving the validity of a sale, the court can apply the equitable principle that an innocent vendee who, subsequent to the sale, has received notice of the vendor's fraud will be protected only to the extent of the portion of the consideration paid prior to the receipt of such notice: *Quære.*

MOTION for a new trial.

This was an action at law arising out of a sale of certain property by one Forbes to the plaintiff, and its subsequent seizure as the property of Forbes under attachment proceedings. It appeared that, prior to September 1878, Forbes was the owner of a stock of dry goods in a store at Waseca, Minnesota. On the 17th of that month he executed a bill of sale of said stock of goods to the plaintiff, and delivered to him possession. This was done by virtue of an agreement of sale, made without any fraudulent intent on the part of plaintiff, and without any knowledge by him of any such intent on the part of Forbes, by which agreement plaintiff paid Forbes for the goods $3000 in cash, and assumed the payment of certain debts held by a bank in Waseca against Forbes, amounting to about $3800. This agreement was made, or at least

repeated, in the presence of the cashier of the bank, to whom a list of the debts was exhibited, with the statement that plaintiff had agreed to pay them. There was no proof of any agreement of the bank to look to plaintiff or to release Forbes, except the proof that the cashier was advised of and assented to the arrangement. Subsequently to the delivery of possession to plaintiff, the sheriff, by virtue of certain writs of attachment against Forbes, levied upon and took possession of the goods as the property of Forbes, under the claim that the sale to plaintiff was void because made to hinder, delay and defraud creditors. One of the questions raised in the present case was, whether if there was fraud on the part of Forbes, the assumption of the bank debts by plaintiff was binding upon him, and therefore equivalent to a cash payment, or whether it did not bind him, and therefore he was to be protected only to the extent of the actual cash paid? The court charged that the agreement to assume the debts rendered plaintiff liable to the bank, and therefore was equivalent to the payment of so much money. This ruling was the ground for the motion for a new trial.

Wilson & Gale and *Rogers & Rogers*, for the motion.

C. K. Davis, contra.

The opinion of the court was delivered by

McCRARY, C. J.—I have grave doubts as to the propriety of attempting to apply to a case at law the principle invoked by counsel for defendant in this case. That principle is, that where a vendee buys in good faith, and without notice of fraud on the part of the vendor, and pays a part only of the consideration, agreeing to pay the remainder at a future day, if, before such remainder is paid, he receives notice of the vendor's fraud, he will be protected only to the amount actually paid before notice. No doubt this is sound principle in equity; but can it be applied by a court of law? Can such a court rescind the contract *pro tanto*, and place the parties *in statu quo?* If so, can it be done in a case like the present, in which no issue is made except upon the validity of the sale? If the sale was held void, so as to leave the title in Forbes, against whom the attachments were issued, judgment at law could be rendered for defendant; but where the sale

is found to be valid and *bona fide*, so far as the vendee is concerned, and the title is vested in him, and where he has sold or disposed of a portion of the stock, and probably expended money and given time and labor in its care and preservation, it seems probable that only a court of equity would be competent to grant any relief to the creditors of the vendor.

But it is not necessary to pass finally upon this question, as I am clearly of the opinion that the proof shows a payment by plaintiff of the whole of the purchase price. It is contended that the promise by plaintiff to assume and pay the indebtedness of Forbes at the bank, though made as a part of the consideration for the purchase, was not payment, and this for the reason that plaintiff is not legally bound to pay those debts. It is said that the holders of those claims cannot sue plaintiff and recover upon them. Upon this question there is a conflict of authority in this country. In many of the states the right of action by the payee of such debts against the party assuming to pay them is maintained, even where such payee is not party to the contract.

This is upon the ground that such a promise is an original promise, based upon a valuable consideration, namely, the sale and delivery of the goods: 1 Pars. Cont. (5th ed.) 466–468; *Fanley* v. *Cleveland*, 4 Cow. 432; *Same* v. *Same*, Id. 639; *Canal Co.* v. *Bank*, 4 Duer 97; *Lawrence* v. *Fox*, 20 N. Y. 268; *Arnold* v. *Lyman*, 17 Mass. 400; *Carnigie* v. *Morrison*, 2 Met. 404; *Crocker* v. *Stone*, 7 Cush. 338; *Hynd* v. *Holdship*, 2 Watts 104; *Burs* v. *Robinson*, 9 Barr 229; *Eddy* v. *Roberts*, 17 Ill. 508; *Todd* v. *Tobey*, 29 Me. 219; *Motley* v. *Manufacturing Ins. Co.*, Id. 337; Metcalf on Cont. 205–11, and cases cited in notes.

And such is the law in Minnesota, as repeatedly decided by the Supreme Court of that state: *Sanders* v. *Clason*, 13 Minn. 379; *Goetz* v. *Foos*, 14 Id. 265; *Merriam* v. *Lumber Co.*, 23 Id. 314. But the opposite doctrine is maintained by numerous cases, and among them, by the Supreme Court of the United States, in *Nat. Bank* v. *Grand Lodge*, 98 U. S. 123; 2 Chitty Cont. (11th ed.) 74, and cases cited in notes; *Mellon* v. *Whipple*, 1 Gray 317.

Ordinarily, this court would feel bound to adopt and follow the rule laid down by the Supreme Court in *National Bank* v. *Grand Lodge*, *supra*; but, under the peculiar circumstances of the present case, I am clearly of the opinion that I ought to apply the rule established by the Supreme Court of the state of Minnesota.

It will be observed that the plaintiff assumed and agreed, in consideration of the sale to him of the stock of goods, &c., to pay certain debts held by the bank against Forbes. In so far as the debts are the property of the bank, it is certain that they can be sued upon only in the state courts; for it appears that the bank is a corporation of the state of Minnesota, and the plaintiff a citizen of that state. How many of these debts belong to the bank, and how many to other parties represented by the bank, and how many of such other parties are citizens of Minnesota, does not appear, nor is it material; it is enough to say that certainly a part, and probably the whole, of said debts could only be collected by suit in the state courts. It may be that some of the claims are less than $500, and for that reason not within the jurisdiction of this court. I must assume, therefore, that, in case plaintiff refuses to pay said claims, suits must be brought certainly upon some of them, and probably upon all of them, in the courts of Minnesota.

So far as those courts are concerned, as already seen, the law is settled by repeated decisions of the Supreme Court, and, in accordance therewith, the plaintiff would be held liable in a suit by the payee of any of said debts. The question, therefore, is, shall this court hold that the creditors of Forbes are entitled to recover from plaintiff the sum of those debts, in this case, and thus subject him to a second payment of the same amount to the holders of the claims?

A decision which would establish such injustice as this is not, I am sure, required at my hands. It is true that this case does not belong to the class in which, as a rule, the federal courts are required to follow the decisions of the highest judicial tribunal of the state. But, although the question is a new one, I am clearly of the opinion that, even on questions purely of commercial law, the federal courts should follow those decisions if it appears that, by reason of the situation of the parties and of the subject-matter, to hold otherwise would subject a party to double payment of the same debt, without the possibility of relief from the federal courts. The motion for a new trial is overruled.

It is proposed to indicate the extent and limitations of the rule, that "The laws of the several states, except where the Constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply:" Jud. Act 1784, sect. 34 (Rev. Stat. U. S., sect. 721).

I. Exceptions.

UNITED STATES CONSTITUTION, STATUTES AND TREATIES.—The laws of the several states are not rules of decision for the federal courts in cases where the Constitution, treaties or statutes of the United States otherwise require or provide. See *Denn* v. *Harnden*, 1 Paine 55.

SPECIAL CASE.—A case gotten up in a state court for the purpose of anticipating a decision by the Supreme Court of the United States, on a question known to be pending before it, would not necessarily be followed. This is intimated *obiter* in *Pease* v. *Peck*, 18 How. 595. But *East Oakland* v. *Skinner*, 94 U. S. 255, holds that the Supreme Court of the United States, when shown a decision of a state Supreme Court construing a state statute, will not entertain the objection that the cause in which it was rendered was a fictitious one, and decline to follow the decision as not genuinely contested.

PRIVATE ACTS.—In *Smith* v. *Kernochen*, 7 How. 198, a case in which the Supreme Court of Alabama had construed the charter of an insurance company, holding it violated by a transaction leading to a mortgage, it was held that such construction of the charter by the state court would be followed; but, subsequently, in *Williamson* v. *Berry*, 8 How. 495, it was held that the Supreme Court of the United States would not be bound by a state court's construction of a private act, the act in this case being one for the discharge and appointment of a trustee in a certain case.

CRIMINAL LAWS.—Nor are the criminal laws of a state to be followed by the federal courts: *United States* v. *Reid*, 12 How. 361.

ADMIRALTY.—State laws are not of binding force in cases in admiralty: *Neves* v. *Scott*, 13 How. 268. But in *The Princess Alexandra*, 8 Ben. 209, it was held that the construction put by the highest court of a state upon a pilot law is binding upon the federal courts—and this, notwithstanding a different construction had been previously put upon the law by the United States Supreme Court.

EQUITY.—Nor in equity: *Russell* v. *Southard*, 12 How. 139; *Neves* v. *Scott*, 13 Id. 268. But see *Ewing* v. *St. Louis*, 5 Wall. 413, where it was held that a non-resident complainant can ask no greater relief in the courts of the United States than he could obtain were he to resort to the state courts, and that, if in the latter courts equity would afford no relief, neither will it in the former.

PLEADINGS AND PRACTICE.—State rules relating to pleadings and procedure are not within the meaning of the 34th section, although by another enactment: Sect. 914, Rev. Stat. U. S. (Act June 1st 1872, sect. 5), they are made rules for the guidance of the Circuit and District courts of the United States within the several states. See *Robinson* v. *Campbell*, 3 Wheat. 212; *Fenn* v. *Holme*, 21 How. 481; *Sheirburn* v. *Cordova*, 24 Id. 423; *Wayman* v. *Southard*, 10 Wheat. 1; *Brown* v. *Van Braam*, 3 Dall. 351; *Atlantic, &c., Railroad Co.* v. *Hopkins*, 94 U. S. 11; *Chemung, &c., Co.* v. *Lovery*, 93 Id. 72.

GENERAL JURISPRUDENCE.—(*a.*) *Commercial law.*—The federal courts refuse to be bound by decisions of the state tribunals in cases involving questions of general jurisprudence, and especially in cases involving questions of commercial law. Thus, in *Williams* v. *Suffolk Ins. Co.*, 3 Sumn. 270, 277, concerning the rule *causa proxima non remota spectatur*, STORY, J., held that "this doctrine being founded not upon local law, but upon the general principles of commercial law, would be obligatory upon this court, even if the decisions of the state court of Massachusetts were to the contrary; for upon commercial questions of a general nature the courts of the United States possess the same

general authority which belongs to the state tribunals, and are not bound by the local decisions. They are at liberty to consult their own opinions, guided indeed by the greatest deference for the acknowledged learning and ability of the state tribunals, but still exercising their own judgment as to the reasons on which those judgments are founded." And see *Foxcroft* v. *Mallete*, 4 How. 353, 379.

In *Swift* v. *Tyson*, 16 Pet. 1, it was decided that, admitting that by the law of New York a pre-existing debt was not a valuable consideration for the transfer of an accepted bill, this rule was not obligatory upon the federal court, which therefore held that a pre-existing debt did constitute a valuable consideration in the sense of the rule protecting *bona fide* holders for value and without notice.

The same principle was recognised in *Carpenter* v. *The Providence, &c., Ins. Co.*, 16 Pet. 495, 511, Mr. Justice STORY holding that "we have not thought it necessary upon this occasion to go into an examination of the cases cited from the New York and Massachusetts reports, either upon this last point or upon the former point. The decisions in those cases are certainly open to some of the grave doubts and difficulties suggested at the bar as to their true bearing and results. The circumstances, however, attending them are distinguishable from those of the case now before us, and they certainly cannot be admitted to govern it. The questions under our consideration are questions of general commercial law, and depend upon the construction of a contract of insurance which is by no means local in its character, or regulated by any local policy or customs. Whatever respect, therefore, the decisions of state tribunals may have on such a subject, and they certainly are entitled to great respect, they cannot conclude the judgment of this court. On the contrary, we are bound to interpret this instrument according to our own opinions of its true intents and objects, aided by all the lights which can be obtained from all external sources whatsoever, and if the result to which we have arrived differs from that of these learned state courts, we may regret it, but it cannot be permitted to alter our judgment."

In *Boyce* v. *Tabb*, 18 Wall. 546, slaves were held sufficient consideration for a note, notwithstanding the Supreme Court of Louisiana had held otherwise. And see *Brown* v. *Van Braam*, 3 Dall. 354; *Robinson* v. *Ins. Co.*, 3 Sumn. 220; *Gloucester Ins. Co.* v. *Younger*, 2 Curtis 322.

The opinion of Judge MCCRARY in the principal case admits the rule to be that the federal will not necessarily follow the state courts in deciding questions of commercial law, but excepts the principal case from the operation of the rule on the ground that to do otherwise might subject the plaintiff to a double liability. This certainly appears equitable; for were the plaintiff sued by the bank in the state court, a plea of former recovery could not protect him, since the bank was not a party to the suit in the federal court, and therefore could not be concluded by its action. Had the bank been a party and then sought to subject the plaintiff to a second liability, it would seem that a plea of former recovery would avail the latter, or that he might have procured an injunction from the federal court restraining the bank from proceeding at the state court. See *French* v. *Hay*, 22 Wall. 250; *Fisk* v. *U. P. Railroad Co.*, 10 Blatchf. 518.

Federal courts will not follow decisions of state courts where so to do would impair the obligation of contracts: *Gilpeke* v. *Dubuque*, 1 Wall. 175. In this case, by a series of decisions of the Supreme Court of Iowa prior to that of *Iowa* v. *Wapello*, 13 Iowa 388, the right of the legislature

of that state to authorize municipal corporations to subscribe to railroads extending beyond the limits of the city or county, and to issue bonds accordingly, was settled in favor of the right; and it was held that those decisions meeting with the approbation of this (the federal supreme) court, and being in harmony with the adjudications of sixteen states of the Union, will be regarded as a true interpretation of the Constitution and laws of the state so far as relate to bonds issued and put upon the market during the time that those decisions were in force. "The fact," said the court, "that the Supreme Court of Iowa *now* hold that those decisions were erroneous, and ought not to have been made, and that the legislature of the state had no such power as former courts decided that they had, can have no effect upon transactions in the past, however it may affect those in the future." And to the same effect, see *Havemeyer* v. *Iowa County*, 3 Wall. 294; *Kenosha* v. *Lamson*, 9 Id. 477; *Alcott* v. *Supervisors*, 16 Id. 678; *Mitchell* v. *Burlington*, 4 Id. 270; *Larned* v. *Burlington*, Id. 275; *Delmas* v. *Ins. Co.*, 14 Id. 661. But see *Stone* v. *Wisconsin*, 94 U. S. 181.

And the U. S. Supreme Court affirms its right to construe a state statute independently of the state courts when such statute in fact amounts to a contract: *Jefferson Branch Bank* v. *Skelly*, 1 Blk. 436; *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 145.

And where a question involved in the construction of state statutes practically affects the remedies of creditors which are protected by the Constitution, this court will exercise its own judgment on the meaning of the statutes, irrespectively of the decisions of the state courts, and if it deems those decisions wrong, will not follow them. A remedy which the statutes of a state on what this court considers a plainly right construction of them, give for the enforcement of contracts, cannot be taken away, as respects previously existing contracts, by judicial decisions of the state courts construing the statutes wrongly: *Butz* v. *Muscatine*, 8 Wall. 575.

(*b.*) *Other Cases.*—And in cases of general jurisprudence other than those involving questions of commercial law, the decisions of the state courts will not necessarily be followed.

Thus, in *Chicago* v. *Robbins*, 2 Black 418, the city of Chicago sought to recover from Robbins indemnity for damages recovered against it because of an injury to one who had fallen into a hole negligently left open and unguarded by Robbins. The Supreme Court of Illinois had previously decided a case similar to *Chicago* v. *Robbins*, laying down a rule as to negligence in omitting to cover an opening in an area to which the federal Supreme Court disagreed. It was urged that the decision in the state court must be followed, but the court, by Mr. Justice DAVIS, held that "where private rights are to be determined by the application of common-law rules alone, this court, although entertaining for state tribunals the highest respect, does not feel bound by their decisions."

Thomas v. *Hatch*, 3 Sumn. 170, holds that the federal courts are not bound in the interpretation of deeds by the local adjudications of a particular state.

And where a question arises under a compact between two states, the rule of decision is not to be collected from the decisions of either state, but is one of a national character: *Marlatt* v. *Silk*, 11 Pet. 1.

II. Cases within the Rule.

CASES INVOLVING STATE CONSTITUTIONAL PROVISIONS.—Thus, in *South Ottawa* v. *Perkins*, 94 U. S. 260, the Supreme Court of the United States followed the Supreme Court of Illinois in deciding that under the Constitution of 1848 of that state, a statute thereof is not valid unless the legislative journals show its passage by a majority of all the mem-

bers-elect in each house of the General Assembly.

In *Nesmith* v. *Sheldon*, 7 How. 812, the same court followed the Supreme Court of Michigan in deciding that under a constitutional provision forbidding the legislature from "passing any act of incorporation unless with the assent of at least two-thirds of each house," the judgment of the legislature is required to be exercised upon the propriety of creating each particular corporation, and two-thirds of each house must sanction and approve each individual charter. And see *County of Leavenworth* v. *Barnes*, 94 U. S. 70.

In *Luther* v. *Borden*, 7 How. 1, two governments having been in existence in Rhode Island, viz.: the old charter government and a new one formed by a convention of the people, and the courts of that state having recognised the former as valid, it was held that the federal court would adopt and follow the state court's decision; and see *Webster* v. *Cooper*, 14 How. 504.

CASES INVOLVING STATE STATUTES. (*a.*) *Miscellaneous Statutes.*—It is to be remarked that where a state adopts a statute from another country, the decisions of such other country construing such statute are entitled to great consideration, but cannot be considered as conclusive upon the construction of the law; if the doctrines of the courts of the state adopting the statute be irreconcilable with those of the courts of the former country, the state court's decisions will be followed and the others disregarded: *Bell* v. *Morrison*, 1 Pet. 351.

In *Nichols* v. *Levy*, 5 Wall. 433, where a state court—interpreting a statute of its own state, which gave such court jurisdiction to subject legal and equitable interests in real estate to the claims of creditors—decided that the statute embraced trusts like the one in question (which judgment-creditors were seeking to set aside), and that it exempted the property embraced by the trust from the claims of creditors, the Federal Supreme Court followed that construction of the statute and sustained the trust, though it remarked that if the question had been treated by it on general principles of jurisprudence, and independently of the state decisions on the statute, the judgment would necessarily have been the other way.

In *Beauregard* v. *New Orleans*, 18 How. 497, it was held by the Supreme Court of the United States, that its habit had been to defer to the decisions of the judicial tribunals of the states upon questions arising out of the common law of the state (compare this with *Chicago* v. *Robbins*, *supra*), especially when applied to the title in land.

Therefore, where the Supreme Court of Louisiana had decided questions relating to the jurisdiction of the District Court of the First Judicial District of the state over the succession of a debtor who was enjoying a respite from the claims of his creditors for a certain time, and died before the time expired; to the mode in which jurisdiction should be exercised; to the propriety of collaterally attacking a sale made by its authority; to the point whether or not the death of the party transferred the proceedings to the Court of Probate; and the mode in which the Court of Probate should exercise its jurisdiction; the Federal Supreme Court held that it would adopt these decisions—especially where many of them concurred with its own judgments upon the same or similar points.

A state decision that the statute requires the payment of taxes in gold and silver coin, will be followed: *Lane Co.* v. *Oregon*, 7 Wall. 71; and see *Smith* v. *Hunter*, 7 How. 738.

Rules of evidence prescribed by the laws of a state, are to be followed, *e. g.* a statute allowing a party to testify in his own behalf: *Vance* v. *Campbell*, 1 Black 427; *Haussknecht* v. *Claypool*, 1 Id. 431.

(*b.*) *Statutes of Frauds.*—In *De Wolf* v. *Rabaud*, 1 Pet. 476, the courts of New York were followed in holding that under the Statute of Frauds, the consideration of the promise must appear in the writing. In *Summer* v. *Hicks*, 2 Black 532, the decisions of the Supreme Court of Wisconsin, that, under the statute as to fraudulent conveyances, an assignment was vitiated by a provision authorizing the assignee to dispose of the property assigned, "upon such terms and conditions as in his judgment may appear best, and most for the interest of the parties concerned."

In *United States Bank* v. *Daniel*, 12 Pet. 32, a decision of the Kentucky court holding that a statute of that state giving ten per cent. damages for a failure to pay a bill of exchange, applied only to foreign bills.

Beach v. *Viles*, 2 Pet. 675, follows the local court's construction of a statute giving a particular remedy in the nature of foreign attachment against garnishees who possess goods, effects or credits of the principal debtor.

U. S. v. *Morrison*, 4 Pet. 124, follows a decision of the Court of Appeals, Virginia, that, under the execution-law of that state, the right to take out an *elegit* was not suspended by suing out a *fi. fa.*

(*c.*) *Statutes of Limitation.*—*Bell* v. *Morrison*, 1 Pet. 351, follows the Supreme Court of Kentucky as to what kind of a new promise will take a debt out of the statute. *Henderson* v. *Griffin*, 5 Pet. 151, follows the South Carolina Supreme Court in construing two limitation acts together. And where the original manuscript of the laws for the territory of Michigan left out the saving "beyond seas" in the statute, but the published law contained this exception, and the statute, as thus published, had been acknowledged by the people, and had received a harmonious interpretation for a long series of years, it was held that the phrase "beyond seas" ought to be considered a part of the statute: *Pease* v. *Peck*, 18 How. 595. And see *Shelby* v. *Guy*, 11 Wheat. 361; *Davie* v. *Briggs*, 97 U. S. 628. *Shipp* v. *Miller's Heirs*, 2 Wheat. 316, 325, follows the Kentucky court in construing a statute allowing infants and *femes covert* three years after removal of disabilities to complete surveys on entries of land by them, and holding that joint entries of land were within the statute if one of the joint owners be infant or a *feme covert*. *Leffingwell* v. *Warren*, 2 Black 603, follows the Wisconsin court in holding possession under a defective tax-deed adverse, and that, if continued for a sufficient time, it would bar ejectment. And see *McCluny* v. *Silliman*, 3 Pet. 270; *Ross* v. *Duval*, 13 Id. 45; *Webster* v. *Cooper*, 14 How. 488; *Green* v. *Lessee of Neal*, 6 Pet. 291; *Amory* v. *Lawrence*, 3 Cliff. 523; *Tioga Railroad Co.* v. *Blossburg*, 20 Wall. 137.

(*d.*) *Statutes concerning Lands.*—*U. S.* v. *Morrison*, 4 Pet. 124, follows the Virginia Court of Appeals in holding a judgment a lien upon the debtor's real estate. *MaKeen* v. *Delancy's Lessee*, 5 Cranch 23, 32, follows state construction holding that, under a statute requiring deeds to be acknowledged before a justice of the peace, an acknowledgment before a justice of the Supreme Court would be valid.

Bodley v. *Taylor*, 2 Cranch 191, 220, follows the state court in holding that a court of equity might be resorted to in order to set up an equitable against a legal title; and see *Taylor* v. *Brown*, 5 Cranch 255; *Massie* v. *Watts*, 6 Id. 164. *Thatcher* v. *Powell*, 6 Wheat. 119, follows the state construction of a statute regulating the sale of lands for delinquent taxes. *Elmendorf* v. *Taylor*, 10 Wheat. 152, follows the Kentucky court in presuming that, under a land law prescribing that surveys should be recorded within three months from the time of their being made, surveys had been recorded after three months

from their date. And a state court's construction of a will will be followed: *Jackson* v. *Chew*, 12 Wheat. 153; *Carroll* v. *Carroll's Lessee*, 16 How. 275. But this is only where such construction by a state court has been long acquiesced in, so as to become a rule of property; otherwise, the state court's construction of a will need not necessarily be followed: *Lane* v. *Vick*, 3 How. 464, 476. *Conway* v. *Taylor's Ex'r*, 1 Black 603, holds that after a citizen of Kentucky has become the grantee of a ferry franchise and his riparian rights have been, by the highest legal tribunal of the state, repeatedly held sufficient to sustain the grant, the same question is not open to decision by the federal Supreme Court, the adjudications of the state courts being a rule of property and of decision which it is bound to recognise. State decisions construing recording acts must be followed: *Townsend* v. *Todd*, 91 U. S. 452. State constructions of statutes of descent will also be followed: *Gardner* v. *Collins*, 2 Pet. 58; and of an act abolishing estates tail: *Van Rennselaer* v. *Kearney*, 11 How. 297; and see *U. S.* v. *Fox*, 94 U. S. 315; and of the phrase "tide lands" in a state statute: *Walker* v. *State Harbor Commissioners*, 17 Wall. 648. *Christy* v. *Pridgeon*, 4 Wall. 196, holds that "the Mexican colonization law of August 18th 1824, though general to the republic of Mexico, was, so far as it affected lands within the limits of Texas, after the independence of that country, a local law of the new state, as much so as if it had originated in her legislation. The interpretation, therefore, placed on it by the highest court of that state must be accepted as the true interpretation so far as it applies to titles to lands in that state, whatever may be the opinion of this court as to its original soundness. If in courts of other states carved out of the territory since acquired from Mexico a different interpretation has been adopted the courts of the United States will follow the different ruling so far as it affects titles in those states. The interpretation within the jurisdiction of a state of a local law becomes a part of that law, as much so as if incorporated in the body of it by the legislature. If different interpretations are given in different states to a similar law, that law, in effect, becomes by the interpretations, so far as it is a rule of action for this court, a different law in the one state from what it is in the other."

It is, therefore, a rule of general jurisprudence, as well as of statute, that the federal will follow the state courts in expounding purely local laws. See all the cases *supra*, and *Williamson* v. *Berry*, 8 How. 495; *Rice* v. *Railroad Co.*, 1 Black 374; *Jeter* v. *Hewitt*, 22 How. 352; *Webster* v. *Cooper*, 14 Id. 504; *U. S.* v. *Garlinghouse*, 4 Ben. 205; *Lamborn* v. *Dickinson County Commissioners*, 97 U. S. 181; *Railroad Cos.* v. *Gaines*, Id. 697; *Cass County* v. *Johnston*, 95 Id. 360; *Hall* v. *De Cuir*, Id. 485; *Davis* v. *Indiana*, 94 Id. 792; *Venice* v. *Murdock*, 92 Id. 494; *Nelson* v. *Foster*, 5 Biss. 44; *Oliver* v. *Omaha*, 3 Dill. 368.

Besides decisions construing a statute, state decisions as to the repeal of a statute must be followed: *Bailey* v. *Magwire*, 22 Wall. 215.

III. Evidence of the Laws.

Statutes are of course evidence of the laws, and any state may prescribe, by its constitution or laws, what shall be conclusive evidence of its statutes. But the question as to the existence or non-existence of a statute is a judicial one, decidable by the court alone: *South Ottawa* v. *Perkins*, 94 U. S. 261.

Decisions of the courts of final resort are likewise evidentiary of the law. But mere *dicta* of such courts are not: *Carroll* v. *Carroll's Lessee*, 16 How. 275. And the decisions must be "fixed." It is "the latest *settled* adjudications" that are binding: *Leffingwell* v. *Warren*, 2 Black 599; such as may prove but

mere "oscillations" in the course of judicial settlement will not necessarily control: *Gelpeke* v. *Dubuque*, 1 Wall. 175; *Shelby* v. *Guy*, 11 Wheat. 361; *Gardner* v. *Collins*, 2 Pet. 85. But see *King* v. *Wilson*, 1 Dill. 555.

Where the decisions of a state are inconsistent, the latest will be followed: *Green* v. *Lessee of Neal*, 6 Pet. 291; *Leffingwell* v. *Warren*, 2 Black 599; except where to follow the latest decisions would impair the obligations of a contract: *Gelpeke* v. *Dubuque*, *supra*.

And in *Morgan* v. *Curtenius*, 20 How. 1, the Supreme Court of the United States held that it would not reverse a judgment of the United States Circuit Court which, when rendered, followed a decision of the state court, such decision having been overruled by the state court after the United States Circuit Court had rendered its decision. The Supreme Court said that the later decision of the state could not have a retroactive effect upon the decisions of the Circuit Court, and make that erroneous which was not so when the judgment of that court was given. And see *Pease* v. *Peck*, 18 How. 595, 599; *Rowan* v. *Runnels*, 5 Id. 134.

ADELBERT HAMILTON.

Chicago.

Supreme Court of Pennsylvania.

SEAMAN v. THE COMMONWEALTH.

Under a penal statute prohibiting worldly employment on Sunday, one whose business is carried on upon that day by his employee, under his authority, is liable to the penalty.

In such case defendant may be convicted upon evidence that his store was open on Sunday; that an employee was making sales, and that defendant himself was present in the store part of the day.

CERTIORARI to the Court of Common Pleas, No. 2, of Allegheny county.

This was an information before an alderman that John W. Seaman, on December 12th 1880, "being the Lord's day, commonly called Sunday, did then and there engage in doing and performing worldly employment or business, to wit, having open his place of business on the corner of Station street and the Pennsylvania Railroad, in the city of Pittsburgh, and then and there engaged in selling, trading and vending tobacco, cigars, candies, &c., contrary to an Act of Assembly approved April 22d 1794, and its several supplements in such case made and provided."

The Act of 1794 referred to provides that "If any person shall do or perform any worldly employment or business whatsoever on the Lord's day, commonly called Sunday (works of necessity and charity only excepted) * * * every such person so offending shall, for every such offence, forfeit and pay four dollars." By a subsequent statute the penalty in Allegheny county was increased to twenty-five dollars.